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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion	)	
-vs-	)	Docket No. 00-0494
Central Illinois Light Company Central Illinois Public Service Company Commonwealth Edison Company Illinois Power Company Interstate Power Company MidAmerican Energy Company Mt. Carmel Public Utility Co. South Beloit Water, Gas, and Electric Company, and Union Electric Company	)	
Proceeding on the Commission's own Motion concerning delivery services tariffs of all Illinois electric utilities to determine what if any changes should be ordered to promote statewide uniformity of delivery services and related tariffed offerings.	)	

INITIAL BRIEF ON BEHALF OF NEWENERGY MIDWEST, L.L.C. AND THE ILLINOIS INDUSTRIAL ENERGY CONSUMERS

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COMES NOW NewEnergy Midwest, L.L.C. (NewEnergy) and the Illinois Industrial Energy Consumers (IIEC)[1], and for their joint brief pursuant to the schedule in this docket, submit the following arguments and discussions. The joint brief is composed of two parts. The first part

[1] A. E. Staley Manufacturing Company, A. Finkl & Sons, Abbott Laboratories, Inc., Air Products & Chemicals Company, Archer-Daniels-Midland Company, Cargill, Inc., Caterpillar, Inc., Continental General Tire, Inc., Corn Products International, Inc., Equistar Chemicals, L.P., Ethyl Corporation, Ford Motor Company, Granite City Steel Division of National Steel Corp., Illinois Cement Company, LTV Steel Company, Marathon Ashland Petroleum, LLC, Modern Drop Forge Company, Motorola, Inc., Pharmacia Corporation, Northwestern Steel & Wire Company, Olin Corporation, Owens-Illinois, Inc., Solutia, Inc., Spectrulite Consortium, Inc., and Viskase Corporation.

addresses the lack of uniformity regarding terms and conditions of certain Illinois utilities' single billing (SBO) tariffs. The remaining portion addresses the implementation of pro forma delivery service tariffs.

In support for its positions, NewEnergy sponsored the direct and rebuttal testimonies of Kennan A. Walsh (NewEnergy Revised Exhibits 1 and 2, respectively). Mr. Walsh primarily focused on matters pertaining to the SBO tariffs and related issues, and also indicates NewEnergy's support for pro forma delivery service tariffs. NewEnergy is a certified alternative retail electric supplier in California, Illinois, New Jersey, New York, Ohio, and Pennsylvania.

In support for its positions regarding pro forma delivery service tariffs, IIEC sponsored the rebuttal testimony of Robert Stephens, IIEC Exhibit 1.0 Revised. IIEC is comprised of industrial companies and firms that consume substantial amounts of electricity in all of the major Illinois electric utility service territories. IIEC members are eligible for delivery services. Several IIEC members operate facilities and plants in multiple utility service territories. (Tr. at 653).

As the Illinois Commerce Commission (Commission) knows well, NewEnergy and IIEC have been long standing proponents of retail competition in the Illinois energy market. Both parties have intervened regularly in Commission proceedings and involved themselves in all sorts of endeavors, aiming towards the goal of bona fide retail competition throughout Illinois, and recognizing that the transition thereto must be fluid and progressive. Though, perhaps, not always in complete agreement as to how these goals and objectives can best be met, NewEnergy and IIEC have come together in this brief in order to express the common views and arguments described herein. NewEnergy and IIEC, a supplier and a customer group, two of the major stakeholders in Illinois, maintain the virtues of uniform or pro forma SBO and delivery service tariffs do serve retail competition and will enhance the fluidity and progression of retail competition in the Illinois energy

market.

NewEnergy and IIEC, as more fully addressed herein, respectfully request the Commission enter an order that endorses the implementation of pro forma delivery services and maintains the integrity of the single billing option.

I. SINGLE BILLING TARIFFS

A. Introduction - Terms And Conditions Of The Single Billing Tariff

NewEnergy and IIEC respectfully request that the Commission direct Commonwealth Edison Company (Edison) and AmerenUE/AmerenCIPS (Ameren) to conform their delivery services tariffs and policies to mirror the provisions of other utilities so that they:

(1) **Separately bill** for outstanding bundled service balances and delivery services balances until such bundled service balances are resolved in a manner consistent with how the utilities bill and seek collection from bundled service customers. These separate bundled service bills should be sent directly to the customer by the utility under a separate mailing that does not involve a RES; and

(2) **Separately account** for outstanding bundled service balances and delivery services balances so that the utilities payment posting policies do not render a RES an uncompensated collection agent, and to prevent the commingling of bundled service and delivery services charges.

By adopting uniform and consistent SBO tariffs, the Commission will be acting consistent with its legislative mandate to promote the development of competition, eliminating one of the utilities' anti-competitive practices that is designed to discourage RESs from providing single-billing service. The Commission should direct Edison and Ameren to adopt such an approach for the following reasons:

- A requirement that RESs collect past due balances for bundled service is contrary to the Act;
- A requirement that RESs include past due balances for bundled service is contrary to a plain reading of the SBO tariffs of Ameren and Edison;
- Edison's requirement that RESs include past due balances for bundled service violates its delivery services implementation plan;
- The SBO tariff interpretation by Ameren and Edison is contrary to the Commission's Orders in their delivery services proceedings;
- The SBO tariff interpretation by Edison is contrary to the way it interacts with RESs;
- The manner in which Edison and Ameren apply its SBO tariffs damages the relationship between the RES and its customer; and
- There are a number of workable solutions to address the issue of unpaid bundled service balances by delivery services customers.

B. Background

The Electric Service Customer Choice and Rate Relief Act of 1997 (Customer Choice Act or Act) required each electric utility to file a single bill option tariff (SBO tariff) that would allow an ARES or electric utility operating outside of its service territory to issue a single bill to its retail customers including both its charges and the utilities' delivery services charges. (*See* 220 ILCS 5/16-118(b).) In the context of each utility's delivery services proceeding, various issues were raised regarding the utilities' SBO tariffs, including the terms and conditions, and the calculation of the credit a customer would receive if a RES were providing a single bill to the customer. Since the Commission approved the SBO tariffs, for those RES' that have chosen to utilize the utilities' SBO tariffs, the utilities have applied the terms and conditions in differing and conflicting fashions.

Specifically, Edison and Ameren require RES' to include unpaid balances for bundled service on the single bills that they issue to their customers; the other utilities do not. The way in which Edison and Ameren are operating is contrary to the Act, their own SBO tariffs, implementation plans, and Commission orders in their delivery services proceedings and the unbundling proceeding.

While NewEnergy has patiently worked with Edison over the past year in an attempt to resolve this issue, and has repeatedly accommodated Edison's interests, Edison continues to refuse to apply its SBO tariff in a manner consistent with the specific language in the tariff, Illinois law and various Commission orders. In fact, the requirement to include unpaid bundled service balances on the RES' single bill is tantamount to forcing the RES to act as an unpaid collection agent of the utility. This certainly is not the intended result under the plain language of the Act, the Commission's prior orders, and the Ameren and Edison SBO tariffs. The Commission should require Ameren and Edison to interpret and apply their SBO tariffs in a manner consistent with the other utilities in the state: **RESs should not be required to include unpaid balances for bundled service on the single bills they issue to their customers.**

The empirical evidence is clear that the SBO tariffs of Edison and Ameren are improperly designed or they are being improperly applied. As the Commission is aware, there has been very little, if any, competition outside of the Edison service territory since the commencement of customer choice in Illinois. There are roughly sixteen (16) ARES who have received certificates of service authority. (*See* http://www.icc.state.il.us/icc/Consumer/plugin/certlist.htm.) As Staff witness Dr. Eric Schlaf recognized, the vast majority are affiliates of Illinois electric utilities. (Tr. at 103.) However, out of all the RESs in the Edison service territory, only two (2) RESs – NewEnergy and MidAmerican – are offering SBO service to its customers. (*See* Clair Tr. at 539.) Outside of the Edison service territory only one RES - MidAmerican -- is offering SBO service to retail customers

in Illinois Power Company's (IP or Illinois Power) service territory. (*See* Gudeman/Smith Tr. at 244-245.) Out of the 300 customers being served by a RES in the Ameren service territories, **not a single customer is taking service under the SBO tariff**. (*See* Ameren Hock Tr. at 145-46.) No other registered RES is offering SBO service to customers in any other utilities' service territory. Significantly, even Edison's sister company, an active certified RES in Edison's service territory, is not offering the SBO to its retail customers. (*See* Clair Tr. at 539.)

C. A Request That RESs Collect Past Due Balances For Bundled Service Is Contrary To The Act

Ameren and Edison appear to have taken the legal position that Section 16-118(b) of the Act (220 ILCS 5/16-118(b)) allows an electric utility to require a RES utilizing the SBO to act as an unpaid collection agent of the utility. (*See* Edison Ex. 1.0 at 4; Ameren Ex. 2.0 at 2.) However, this interpretation is improper and contrary to the express language in the Act. Section 16-118(b) provides that:

> "An electric utility shall file a tariff pursuant to Article IX of the Act that would allow alternative retail electric suppliers or electric utilities other than the electric utility in whose service area retail customers are located **to issue single bills to the retail customers for both the services provided by such alternative retail electric supplier or other electric utility and the delivery services provided by the electric utility to such customers.** The tariff filed pursuant to this subsection shall (i) require partial payments made by retail customers to be credited first to the electric utility's tariffed services, (ii) impose commercially reasonable terms with respect to credit and collection, including requests for deposits, (iii) retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its tariffed services, in the same manner that it would be permitted to if it had billed for the services itself, and (iv) require the alternative retail electric supplier or other electric utility that elects the billing option provided by this tariff to include on each bill to retail customers an identification of the electric utility providing the delivery services and a listing of the charges applicable to such services. The tariff filed pursuant to this subsection may also include other just and reasonable terms and conditions. In addition, an electric utility, an alternative retail electric supplier or electric utility other than the electric utility in whose service area the customer is located, and a customer served by such alternative retail electric supplier or other electric utility, may enter into an agreement pursuant to which the alternative retail

> electric supplier or other electric utility pays the charges specified in Section 16-108, or other customer-related charges, including taxes and fees, in lieu of such charges being recovered by the electric utility directly from the customer."

(*See* 220 ILCS 5/16-118(b).) (emphasis added.) Section 16-118(b) of the Act specifically refers to services provided by ARES or other electric utility and **the delivery services** provided by the electric utility to such customers. There is simply no provision in Section 16-118(b) that addresses RES's being required to include outstanding bundled service balances under the SBO. It is not there.

D. A Requirement That RESs Include Past Due Balances For Bundled Service Is Contrary To A Plain Reading Of The SBO Tariffs Of Ameren And Edison

In continuing to oppose the adoption of pro forma tariffs and uniform terms and conditions in delivery services tariffs, the utilities frequently have cited the need for tariff precision. (*See, e.g.,* Edison Ex. 4.0 at 17-18.) Edison witnesses Clair and Alongi agreed that tariff language must be precise, which Ms. Clair defined as "specific enough to be able to correctly understood." (*See id. See also* Tr. at 517-18.) As Edison witness Clair admitted, one of the reasons for having precise tariff provisions is to reduce customer confusion and misunderstanding. (*See id.* at 518.) If Edison's interpretation of its tariff is to be believed, it is clear that Edison has failed to draft its SBO tariff with the precision that it holds as a virtue.

Although she testified at length in three separate pieces of testimony regarding Edison's SBO tariff, Edison witness Clair, somewhat surprisingly, declared that she was "only somewhat familiar" with the tariff. (*See* Tr. at 519.) Nevertheless, Ms. Clair did state that she was familiar that the SBO tariff had sections regarding availability, prerequisites for service, obligations for Edison, and obligations for RESs. (*See id.*) In fact, Ms. Clair was aware that the Edison SBO tariff imposes seven (7) detailed obligations upon RESs if it wishes to provide single-billing service to its retail customers. (*See id.* at 520.) Upon cross-examination, Ms. Clair had no choice but to admit that each

obligation imposed upon RESs under the SBO tariff that referred to charges to be billed, remitted, or collected refers exclusively to **delivery services charges**. (*See id.* at 523.)

Edison's SBO tariff fails to make mention of any obligation of RESs to include outstanding bundled service charges on the single bills that they issue to their customers. Similarly, the Ameren SBO tariff is silent on whether RESs must include charges incurred by retail customers under bundled service if the RES selects the SBO. (*See* Hock Tr. at 147.) Clearly, the lack of precision in their SBO tariffs dictates that the Commission direct Edison and Ameren to apply their single-billing tariffs in a uniform and consistent manner like all other Illinois utilities. RESs operating under the SBO tariff should not be required to bill the customer for outstanding bundled service balances.

E. Edison's Requirement That RESs Include Past Due Balances For Bundled Service Violates Its Delivery Services Implementation Plan

The requirement that RESs act as unpaid collection agents for unpaid bundled service balances also does not appear in Edison's Delivery Services Implementation Plan ("Implementation Plan"). (*See* NewEnergy Rev. Ex. 2 at 4.) In fact, in the section of Edison's revised delivery services Implementation Plan entitled "Single Bill Requirements," the following pertinent passage appears under the heading "**5. Collection Notices**":

> "ComEd will continue to send collection notices to customers for charges for services rendered by ComEd, following current collection policies as approved by the ICC regardless of whether the Retail Electric Supplier has selected the Single Billing Option. The supplier is responsible for its own collection processing."

(*See Edison's Non-Residential Open Access Implementation Plan*, Making Open Access Work, Revised February 15, 2000 at 77.) A plain reading of this provision in Edison's Implementation Plan suggests that Edison will continue to monitor bundled service balances and will send collection notices for any outstanding bundled balances, even if that customer is receiving a single bill from

its RES. (*See* NewEnergy Rev. Ex. 2.0 at 5.) That is, under the Commission-approved Implementation Plan, Edison should be required to follow-up the Collection Notices with a separate bill for those outstanding balances.

Indeed, under cross-examination from the Hearing Examiner, Edison witness Clair admitted that when Collection Notices are sent to customers those notices contain the outstanding balances owed. (*See* Tr. at 449-51) Thus, Edison is certainly able to separately account for and collect an outstanding bundled service balance but it has chosen not to. Further, Ms. Clair also admitted that when a Payment Plan is utilized by a customer for outstanding bundled service balances, those balances can be separately accounted for and monitored on Edison's billing system. (*See id.* at 569-571.)

Edison's business practices are directly contrary to Edison's SBO tariff, its Implementation Plan, as well as Edison witness Clair's testimony.

F. The SBO Tariff Interpretation By Ameren And Edison Is Contrary To The Commission's Orders In Their Delivery Services Proceedings

After extensive workshops, discovery, testimony, hearings, and deliberations by the Commission, each of the Illinois electric utilities had its delivery services tariffs approved during the summer of 1999. In the delivery services tariff proceeding, there were a myriad of issues, including revenue requirement, fees and charges, and tariff terms and conditions. With respect to the utilities' proposed SBO tariffs, a number of issues were litigated including the basis of the SBO credit, the methodology for calculation of the SBO credit, the amount of the SBO credit, bill format, remittance schedules, and various other terms and conditions of the SBO tariff. (*See e.g.* Commonwealth Edison Company, Ill. C.C. Dkt No. 99-0117 (Aug. 26, 1999)).

Neither Ameren nor Edison sought specific approval to require RESs to include unpaid balances for bundled service on the RESs bills issued pursuant to their respective SBO tariffs. In fact, while the Commission obviously approved the respective SBO tariffs, there was **never** a finding that requiring RESs to include unpaid balances for bundled service was just and reasonable. Contrary to their assertions in pre-filed testimony, witnesses for both Ameren and Edison were forced to admit that this specific issue was not addressed in their delivery services proceedings. (*See* Hock Tr. at 148; Clair Tr. at 516.)

Likewise, during both the Ameren and Edison delivery services proceedings, there was no utility proposal to breakdown the cost components of the SBO credit to compensate RESs for collection of unpaid balances for bundled service if a RES chose the respective SBO tariffs. Again, Ameren and Edison witnesses were forced to admit this fact. (*See* Hock Tr. at 148; Clair Tr. at 516.) If it was the intent of Ameren and Edison to make RESs unpaid collection agents if it chose the SBO tariff, they bore the burden of proof to justify that such a condition of its SBO tariff was just and reasonable. (*See* 220 ILCS 5/9-201(c).) Having failed to even attempt to meet that burden in the delivery services proceedings, Ameren and Edison are now attempting to create a novel interpretation of not only the Act but also their implementation plans and the Third Interim Order in the unbundling proceeding.

G. The SBO Tariff Interpretation By Edison Is Contrary To Its Position In The Unbundling Proceeding

The position taken by Edison in the instant proceeding directly contradicts the position taken by the very same Edison witness in the unbundling proceeding, ICC Docket No. 99-0013. In the unbundling proceeding, the utilities argued successfully those credit functions that are related to **collecting payments of overdue bills should not be unbundled.** (*See* Edison Clair Phase II

Rebuttal Testimony at 1.) Specifically, Ms. Clair testified that:

> "Mr. Walsh included a number of credit-related functions that are not part of the billing service and are not appropriate for unbundling. **Specifically, those functions contained at items 9 though 12 of his list should not be unbundled** – "Posting payments to customer accounts," "Performing billing corrections," **"Collecting payments of overdue bills,"** and "Handling of billing inquiries from customers or their agents." To permit a customer to choose, for example, who will be making collection efforts if they fail to pay in a timely manner is poor business practice, and achieves no benefit."

(*See id.*) (emphasis added.) Additionally, Ms. Clair testified that:

> "Moreover, there are certain decisions that can and should be made only by the DSP. For example, certain customers may be experiencing financial difficulties. It is essential that a DSP retain the ability to make credit decisions, establish individual payment plans or like matters. In short, **the billing service does not exist solely for the benefit of the customer. Rather, it is an important internal service for the utility, as well**. The potential for fraud is rampant if some entity other than the DSP is making changes to customers' bills."

(*See id.* at 2, lines 29 – 35) (emphasis added.) The most painfully contradictory testimony from Ms. Clair in the unbundling proceeding, is as follows:

> "Regardless of any changes in the competitive environment, **the DSP is ultimately responsible for ensuring that the following occur:** that bills pertaining to delivery services it provides are accurate, that customers pay for its delivery services in a timely fashion, and **that appropriate action is taken against customers who maintain delinquent accounts**. These items are of great importance to delivery services companies and their shareholders and, while these functions may be outsourced to another entity on a contractual basis, they cannot and should not be unbundled for another entity to perform."

(*See id.* at 2, lines 36 – 42.) (emphasis added.) The Commission agreed with Edison and decided not to further unbundle some of the billing functions, concluding in its Third Interim Order that:

> "The Commission also believes that the DSP, like any other service provider, has the right to maintain its customer accounts and post payments received for its services to the proper customer's account."

(*See,* Investigation Concerning the Unbundling of Delivery services Under Section 16-108 *Of The Public Utilities Act*, Ill. C.C. Dkt. No. 99-0013, Order at 26, (Dec. 22, 1999.) Thus, based upon the

arguments of the utilities, the Commission declined to further unbundle billing services in order to allow the utilities to continue to maintain its customer accounts and payment posting practices.

Further, the Commission's Third Interim Order in the unbundling proceeding specifically identified the functions that have been unbundled pursuant to the SBO tariff. (*See id.* at 23 - 26.) Collecting payments for overdue or unpaid bundled service balances is not intended to be an SBO function, nor is collection of these balances an activity that the utilities were ordered to unbundle in order to allow RESs to perform these services on behalf of the utility. (*See id. See also* NewEnergy Rev. Ex. 1 at 10-11.)

It appears that Ameren and Edison have had a change of heart since the entry of the Third Interim Order in the unbundling proceeding. Although the utilities successfully argued that **the utilities** needed to retain control over being able to take appropriate action against those customers that maintain delinquent accounts, now Ameren and Edison would rather have RESs collect the unpaid balances. However, in return for performing these collection activities and processing bills and payments that are unrelated to RES service, a RES receives no compensation. (*See* NewEnergy Rev. Ex. 1.0 at 12.)

Collection activities are not cost free; yet for some reason Ameren and Edison apparently expect to receive free billing and collection service from any RES who serves a customer under the SBO if it has a pre-existing unpaid bundled service balance.

The Commission cannot ignore the Third Interim Order in the unbundling proceeding and the contradictory positions taken by Edison in that proceeding as it relates to this issue. Ameren and Edison should be required to cease their efforts to force RESs to include unpaid bundled service balances on single bills for delivery services. The utilities should be forced to maintain and be responsible for the collection of the unpaid bundled service balances when a customer switches to

delivery services as they requested in the unbundling proceeding.

H. The SBO Tariff Interpretation By Edison Is Contrary To The Way In Which It Interacts With RESs

Not surprisingly, Ameren and Edison have refused to offer to perform a similar billing and collection function on behalf of RESs. The following testimony by Edison witness Clair highlights the issue:

> Q. Would the Company agree to collect NewEnergy's outstanding balances on its behalf after its customer terminates its service?
>
> A. No.
>
> Q. Why not?
>
> A. We are not part of that supplier arrangement. That's the **supplier's relationship with that customer, and we stay out of it.**

(*See* Tr. at 541.) (emphasis added.) Edison similarly should respect RESs' desire to stay out of Edison's relationship with its former bundled service customer.

I. The Manner In Which Edison And Ameren Apply Its SBO Tariffs Damages The Relationship Between The RES And Its Customer

It is obvious that the General Assembly included the SBO as a means of customer convenience when a RES is serving a retail customer. If the single bill option works properly, the customer will have positive interaction with the RES; conversely, if there are problems, this reflects poorly upon the RES. Additionally, the utilities believe that they lose money when customers are served under the SBO tariff. (*See* Clair Tr. at 535.) In accordance with their profit motives, Edison and Ameren have attempted to apply the SBO tariffs in a manner that inappropriately and unnecessarily intrudes upon and disrupts the relationship that a RES has with its customer.

One of the primary benefits of the SBO is that the customer receives only one bill from a single entity and that single entity becomes the primary point of contact. (*See* Kutsunis Tr. at 294.)

As a result, the customer only has to write one check and make one payment for its electric service. (*See id.* at 294.) As described by NewEnergy witness Walsh, the ability of NewEnergy to provide single billing service translates to an additional value-added service that NewEnergy can provide to a potential customer. (*See* Tr. at 624.)

As a matter of courtesy towards and cooperation with Edison, NewEnergy has assisted Edison in its collection activities. NewEnergy serves its roughly 700 accounts with SBO service. (*See* Tr. at 614.) Over 100 accounts had a past due balance with Edison prior to the customer electing delivery services. (*See id.* at 617-618.) These 100 accounts with a past due balance totaled in the aggregate approximately $2.7 million allegedly due to Edison. (*See id.* at 620.) A single customer had a $1.6 million outstanding balance to Edison. (*See id.* at 621.) Nevertheless, in a good faith effort to assist Edison, on a separate invoice bearing NewEnergy's letterhead, NewEnergy has made a practice of sending a notification to the customer at the time of the first single bill that they have an outstanding balance with Edison. (*See id.* at 634.) Additionally, NewEnergy has sent subsequent notices to its customers if Edison issues a re-bill or makes an adjustment to the customers bundled service balance. (*See id.*)

By requiring a RES to act as an unpaid collection agent for outstanding bundled service balances, Ameren and Edison thrust the RES into a situation which leads to customer confusion regarding charges that are out of the RES's control. As explained by NewEnergy witness Walsh, the customer's unpaid bundled service balance could have arisen from a billing dispute between the utility and the customer, or as a result of the well known Edison metering or billing system malfunctions, or could be just the result of the customer not paying its bill for some other reason. (*See* NewEnergy Rev. Ex. 1 at 8.) In any case, by definition, the event that triggered the unpaid bundled service balance was beyond the control of the RES and beyond the scope of RES service;

the customer-utility relationship for bundled service is absolutely distinct from the RES relationship with either party. (*See id. See also* MidAmerican Ex. 2.0 at 3.)

Edison's actions have had a negative impact upon competition. The failure of Edison to resolve outstanding bundled service balances often results in questions from NewEnergy's customers regarding these unpaid balances. (*See id* at 8-9.) NewEnergy is then forced into providing customer service for Edison regarding a balance about which NewEnergy has no knowledge, and for which NewEnergy receives no compensation from the utility. (*See id* at 9.) Further, NewEnergy is placed in the position of annoying its customers by billing for charges that may well be incorrect due to problems with Edison's billing system. (*See* Clair Tr. at 587-88.)

The Commission must properly craft its solution to this problem. Even if the Commission agrees that RES' should not be required to pass on outstanding bundled service charges, customer confusion will arise if the utility continues to post current payments by the RES to the oldest balance first. As properly explained by MidAmerican witness Kutsunis, this prior balance will not appear on the RES' bill and if the customer makes full payment to the RES, they will believe that they have paid all of the current charges of the RES. (*See* MidAmerican Ex. 2. at 5.) However, when the next bill arrives, the customer will learn that the payment was applied to its outstanding bundled charges by the utility. (*See id. See also* NewEnergy Rev. Ex. 1 at 9.)

The potential for customer confusion is only magnified if the utility is a "combination" utility. As demonstrated by MidAmerican witness Kutsunis, if the utility is allowed to post payments from the RES to the oldest balance and this balance is for natural gas, the RES will be forced to become the gas collection agent, although the RES is not providing natural gas to the customer. This will lead to obvious strain on the customer-supplier relationship. NewEnergy and IIEC respectfully request that the Commission prevent Edison and Ameren from applying its SBO

tariff in a manner that causes customer confusion.

J. RESs Should Not Be Required To Act As Unpaid Collection Agents For Edison And Ameren

The manner in which Ameren and Edison apply their respective SBO tariffs results in RES's acting as unpaid collection agents for charges that existed **prior** to the creation of the RES-customer relationship. Their bizarre practice relieves Ameren and Edison from having to engage in the standard collection activities that every other business in every other industry must undertake. MidAmerican witness Kutsunis properly noted at page 3 of her direct testimony that she was "not aware of any other industry that requires one competitor to become the collection agency for another competitor."

In fact, the Commission has detailed rules regarding collection activities for all Illinois utilities. (*See* 83 Ill. Adm. Code Part 280.) Additionally, Edison has its own set of internal collection policies and procedures for collection of unpaid bills. Edison utilizes up to six (6) different companies for collection activities. (*See* Clair Tr. at 498.) These companies are involved in the collection process prior to and after an account is written-off. (*See* Clair Tr. at 499.) Significantly, these companies are compensated based upon a percentage of the amount of past due amounts the collection agents collect. (*See id.*) Ameren and Edison do not propose to compensate a RES for any of the collection activities that they seek to impose upon a RES that provides service under its respective SBO tariffs. Further, the collection agencies are not required to become financially responsible for the debts that they are seeking to collect. (*See id.*) Ameren and Edison would like to make RESs become financially responsible for the debts that they are seeking to collect. The letter that was attached to NewEnergy witness Walsh's rebuttal testimony demonstrated proof of the manner in which Edison seeks to impose such liability upon NewEnergy. (*See*

Attachment KJW-3, NewEnergy Rev. Ex. 2).

Another troubling aspect to this practice is the fact that Ameren and Edison are seeking to "double recover" for uncollectibles. All utilities collect an amount for uncollectible expenses in their bundled service rates. (*See id.*) Upon cross-examination it was elicited from Edison witness Clair that Edison currently collects an amount of uncollectible expenses in both bundled service rates a well as delivery services rates. (*See id.*) However, Edison witness Clair was unaware of the exact amount of uncollectible expenses that are currently being collected in bundled service rates and delivery services rates. (*See id.* at 499-500.)

K. There Are A Number Of Workable Solutions To Address The Issue Of Unpaid Bundled Service Balances By Delivery Services Customers

NewEnergy, MidAmerican, and the Commission Staff have all offered workable solutions so that the SBO tariffs of Ameren and Edison would be administered in a fashion like the rest of the Illinois electric utilities. Conversely, while Ameren offers no "solution" to this issue, Edison offers a variety of "solutions" all of which would result in NewEnergy either foregoing offering of SBO service or being forced to file a complaint with the Commission. NewEnergy respectfully requests that this Commission adopt its proposed solution. In the alternative, NewEnergy respectfully requests that the Commission adopt one of the solutions offered by Staff or MidAmerican.

1. NewEnergy's Solution

NewEnergy offered a straightforward and simple two-step solution. **First**, the Commission should order Ameren and Edison to cease their efforts to force RESs to include unpaid bundled service balances on single bills for delivery services. (*See* NewEnergy Rev. Ex. 1 at 10.) Specifically, the billing determinants forwarded to RESs for delivery services should not include line items for bundled service balances. **Second**, the Commission also should order utilities, in a uniform

manner, to **separately** account for outstanding bundled service balances and delivery services balances.

Consistent with the utilities' arguments in the unbundling proceeding, and the Commission's Third Interim Order in the unbundling proceeding, the utilities should maintain and be responsible for the collection of the unpaid bundled service balances when a customer switches to delivery services. Additionally, at the time the bundled service customer switches to delivery services, a final bundled service bill should be issued for any related balance for the bundled services that the customer was receiving prior to switching to delivery services. It should be the utility's responsibility to collect a final bill in the same manner as it collects all other outstanding bundled service accounts. (*See* Clair Tr. at 496-497, 532.) Since the utilities requested to retain the responsibility for collecting payments for overdue or unpaid balances, these separate bills should be sent directly to the customer by the utility under a separate mailing that does not involve a RES.

Edison agreed that under NewEnergy's proposed solution, Edison would retain the ability to recover outstanding bundled service balances from the customer, would be able to explain to the customer the reason why Edison believes that the customer owes money, and may utilize the normal collection stream contained in the Commission's rules and Edison's internal policies. (*See id.* at 531, 532.)

As the Commission likely is aware, there has been a consensus-driven effort by utilities, RESs, and customers to develop a set of national uniform business practices ("UBP") for the retail energy market. Edison witness Clair discussed her "extensive" involvement with the UBP's efforts on a national level. (*See* Edison Ex. 1.0 at 2.) In fact, Edison witness Clair describes the recently issued UBP Report as an "industry-wide recognition that establishing common business practices is the key that permits suppliers to do business in different service territories and across state lines."

(*See id.*) One of the issues addressed by the UBP Report was entitled "Billing and Payment Processing."

The Billing and Payment Processing section of the Final UBP Report states:

> "(8) Past Due Balance Prior to Switching
>
> **(a)** Outstanding prior balances are not transferred unless mutually agreed upon by both parties. The Non-Billing Party will continue to bill the Customer separately for any outstanding balances until such balances are fully paid off." (UBP August 1, 2000 Report, Section V, page 39)

(*See* UBP Final Report, Section V, http://www.ubpnet.org/workshop/05_Bill_Pymnt_8-1.pdf, August 1, 2000.) Notwithstanding the fact that Edison acknowledges that the UBP Report is a consensus document, which Edison presumably helped draft, it has no plans to incorporate any of the common business practices from the UBP Report into its delivery services tariffs. (*See* Clair Tr. at 473, 475.)

NewEnergy respectfully requests that the Commission require the Illinois utilities to uniformly apply the above business practice and order any Illinois utility that requires RESs to include unpaid balances for bundled service on single bills to discontinue this practice immediately.

2. MidAmerican's Solution

As the other RES offering the SBO in the state of Illinois, MidAmerican also offered a number of straightforward solutions regarding the non-uniform manner in which Ameren and Edison are applying their SBO tariffs. **First**, MidAmerican proposed that a customer's account with the utility be closed out at the time the customer leaves bundled service or switches suppliers and that a new account be established. (*See* MidAmerican Ex. 2.0 at 4.) **Second**, MidAmerican recommended that payments by RESs to the utility be applied only to electric delivery services provided to the customer during the RES' term of service with that customer. (*See id.* at 5.)

Ameren and Edison offered various "technological difficulties" in implementing MidAmerican's proposal to create a new account when a customer switches to delivery services. (*See* Edison Ex. 5.0 at 6-10; Edison Ex. 9.0 at 1-5; Ameren Ex. 2 at 6-8.) However, these technological difficulties are mainly of the utilities' making and are not a valid basis upon which to dismiss the solution offered by MidAmerican. MidAmerican witness Kutsunis testified that all customer information systems have the ability to track account numbers that change for individual customers by utilizing notations, or notes on an account. (*See* Tr. at 309-310.)

Additionally, MidAmerican's solution is identical to the procedure in which a utility employs if a customer files for bankruptcy. As explained by Edison witness Clair and Illinois Power witnesses Gudeman/Smith, when a customer files for bankruptcy, the account is finaled and a new account is established. (*See* Clair Tr. at 562-563; Gudeman/Smith Tr. at 256.) Ameren witness Hock and Edison witness Meehan, the two "system" experts who testified that MidAmerican's solution was not viable, feigned no knowledge of how their respective companies handled the situation when a customer files for bankruptcy. (*See* Hock Tr. at 154; Meehan Tr. at 461.)

Significantly, Illinois Power, which uses the same vendor billing and posting products as Edison, was able to design its system to track RES bills separately. (*See* Meehan Tr. at 459; Gudeman/Smith Tr. at 258-259.) Illinois Power witnesses Gudeman/Smith opined that its system was designed to separately track bundled service and delivery services bills because "RES would not believe it was their responsibility to try to collect those balances that had occurred prior to them being involved with that particular customer." (*See* Tr. at 258-259.)

L. Conclusion

Contrary to the Act, their SBO tariffs, implementation plans, and various Commission orders, Edison and Ameren seek to require RESs to act as unpaid collection agents by including unpaid

balances for bundled service on the single bills that they issue to their customers. The other utilities do not. NewEnergy and IIEC respectfully request that the Commission require Ameren and Edison to interpret and apply its SBO tariff in a manner consistent with the other utilities in the state.

II. PRO FORMA DELIVERY SERVICE TARIFFS

A. Introduction

While NewEnergy and IIEC continue to push for the development of competition in Illinois, we are faced once more with the typical utility attitude (with some exceptions): it shouldn't be done, it can't be done, it costs too much, now is not the right time, etc. Delay and foot dragging have been common tactics of most utilities, which only serves their parochial interests.

Consider the Commission's investigation of unbundling of delivery services, In Re: Investigation Concerning The Unbundling Of Delivery Services Under Section 16-108 Of The Public Utilities Act, Ill. C.C. Dkt. No. 99-0013 (April 12, 1999). In the first phase of that proceeding, the Commission considered as a policy matter the question of unbundling billing and metering services. Extensive evidence was offered by the parties as to the manner in which the credit issued by the delivery service provider would be determined for the customer taking unbundled service from another provider.

IIEC, NewEnergy, and others argued in favor of an embedded cost method as opposed to the utility proposed avoided cost method. The Commission deferred ruling because it had not contemplated a decision regarding this issue, but stated the issue of the appropriate credit for unbundled delivery services would be an issue in the recently filed delivery service tariff proceedings. (*Id.* at 65). Yet, in the phase of the docket where implementation issues were to be

addressed, the utilities were successful in requiring the parties to once more relitigate the pricing issues surrounding unbundled services even though they had already been addressed by the Commission in the delivery service cases.

Or, consider the pending rulemakings addressing functional separation and standards of conduct, Rulemaking Proceeding to Implement Sections 16-119A(a) Regarding Standards of Conduct, and Section 16-119A(b) Regarding Functional Separation, Dkt. Nos. 98-0147 / 98-0148. Very late in the game, Edison introduced a hybrid proposal which became the subject of several responsive filings and comments, and still two years after the evidentiary hearings in that case, there are still no rules.

Of course NewEnergy and IIEC are anxious for competition to continue to unfold and develop in Illinois. We see value in thoughtful consideration and debate, and the need for caution where appropriate. Even so, the wheel does not need to be reinvented each time, and we are hopeful the Commission is clear and direct in its findings and conclusions regarding implementing pro forma delivery service tariffs.

Based upon the manner in which customer choice has struggled to develop throughout the entire state, there exists an even greater need than before for standardization of the utilities' delivery services tariffs. Obviously, there are issues of fact and determinations of policy that are common to all utilities and all service areas under the Commission's jurisdiction. Uniform rulings on these overarching issues will facilitate greatly the development of competition for electric services in Illinois by decreasing the cost of entry to potential competitors who desire to provide service throughout Illinois and the complexity and cost of entry for customers with locations in multiple service territories in Illinois.

Failure to bring order and harmony to the implementation of delivery services tariffs would

ensure that transaction costs for delivery services customers and retail electric suppliers ("RESs") would be higher than necessary, thus eroding potential savings opportunities for customers. RESs attempting to serve multi-utility and statewide business association customers unnecessarily will have to operate multiple and conflicting business in order to operate within the Illinois retail electric market. The Commission need not look any further than the manner in which Ameren, Edison, and Illinois Power apply their SBO tariff, to see why uniform delivery service tariff policies and a pro forma tariff approach are necessary and appropriate.

The cost of administering complex and inconsistent terms and conditions will increase RES costs to the extent they may decide to reduce or eliminate their participation in the Illinois market. Potential competitors should be able to decide whether to enter the Illinois market based upon the economics of providing service; utilities should not be allowed to erect an artificial barrier to entry by forcing potential competitors to participate unnecessarily in multiple administrative proceedings. None of the utilities have made any credible showing of any unique or unusual conditions that would delay yet again the development of pro forma tariffs. A simple and long advocated solution is needed.

B. Background And Procedural History Surrounding Pro Forma Delivery Service Tariffs

1. Docket No. 98-0680

The implementation of uniform or pro forma delivery service tariffs is not an issue that just came upon the horizon.[2] Approximately three years ago, In Re Investigation Concerning Certain

[2]The words or terms "uniform", "uniformity" or "pro forma" have been used interchangeably by the parties in this proceeding, as well as in prior proceedings and discussions. NewEnergy/IIEC understand uniformity in the context of tariffs to mean the use of the exact structure and wording of tariffs from one utility to another utility with no deviation, whereas pro forma means tariffs that share a common structure, format, and terminology, and allow for deviations. The record, and the

Tariff Provisions Under Section 16-108 Of The PUA And Other Related Issues, Dkt. No. 98-0680 (Oct. 13, 1998), the Commission initiated a proceeding to investigate and create a record regarding the merits of, and potential for, establishing consistent tariff terms and conditions for the delivery service tariff filings that were to take place in 1999:

> "Such investigation will provide an opportunity to receive evidence into the record concerning the pros and cons of standard or pro forma tariffs, examples of standards for pro forma tariff revisions that may exist in other jurisdictions as well as recommendations by staff, utilities and other parties as to possible standards consistent or uniform tariff provisions that could be utilized in Illinois."

(*See id.* at 6) The Commission expressly noted the importance of addressing issues concerning a uniform or pro forma tariff for delivery services which would provide a consistent approach, to the extent practicable, to the provision of delivery services throughout the state. (*See id.* at 5)

In the form of an interim order entered on February 18, 1999, the Commission approved certain consensus agreements reached by the parties whereby certain terms were afforded the same or similar definitions and descriptions, and where common business practices were defined. Some of the consensus items included descriptions of communication protocols, load forecasting requirements, supplier obligations vis-a-vis applicable reliability organizations, customer authorization requirements, switching supplier requirements, DASR procedures, among others. The objective of implementing pro forma delivery tariffs was, thus, in process.

2. 1999 Delivery Service Tariff Cases

In the context of the 1999 non-residential delivery service tariff cases submitted by the Illinois electric utilities, the Commission once more considered the propriety of pro forma delivery

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apparent intention of parties, is to consider pro forma delivery service tariffs. Hence, NewEnergy/IIEC will mostly refer to pro forma delivery service tariffs hereinafter.

service tariffs. In the dockets involving Ameren, Central Illinois Light Company (CILCO), Edison, and Illinois Power, IIEC introduced a Supplier Tariff and Customer Tariff, which were intended to promote uniformity among the utilities non-residential delivery service tariffs. The IIEC tariffs were considered in other utility delivery service tariff cases as well. The IIEC recommended tariffs were originally based upon and followed a similar format of the delivery service tariffs filed by MidAmerican in Docket Nos. 99-0122/99-0130 which, in IIEC's view, were more customer-friendly and understandable than those of the other electric utilities. (IIEC Ex. 1.0 Rev. at 3).

The Commission expressed favor with the concept of uniformity in delivery service tariffs in the aforementioned proceedings, and from a policy perspective agreed that the implementation of uniform delivery service tariffs would enhance competition. In Central Illinois Light Company, Ill.C.C. Dkt. Nos. 99-0119/99-0131 (cons.), Order at 112 (Aug. 26, 1999), the Commission concluded as follows:

> "The Commission agrees that uniformity of terms and conditions is crucial to the development of a competitive market in Illinois. The Commission has striven to achieve consistency in the various delivery service dockets and will continue to do so. ... The Commission intends to initiate another proceeding or proceedings shortly after the completion of this and the other DST dockets which will provide utilities, customers, potential RESs and Staff the opportunity to pursue this objective through both formal and informal processes. The Commission directs Staff to oversee the efforts to develop uniformity of terms and conditions."

In the Ameren dockets, the Commission held:

> "The Commission agrees that uniformity of terms and conditions, to the extent possible, is crucial to the development of a competitive market in Illinois. ... The Commission intends to initiate another proceeding or proceedings shortly after the completion of this and the other DST dockets which will provide utilities, customers, potential RESs and Staff the opportunity to pursue this objective through both formal and informal processes. The Commission directs Staff to initiate a proceeding to mandate conformity among the various delivery service tariffs."
> Central Illinois Public Service Company d/b/a Ameren CIPS and Union Electric Company d/b/a Ameren UE, Ill.C.C. Dkt. No. 99-0121, Order at 162 (Aug. 25, 1999).

Similarly, in the Illinois Power case the Commission expressed its intention "to aggressively pursue the objective of developing a state-wide template that can be implemented by January 1, 2001." (Illinois Power Company, Ill.C.C. Dkt. Nos. 99-0120/99-0134 (cons.), Order at 160 (Aug. 26, 1999).

Finally, in the Edison docket, the Commission stated once more its intent to initiate this proceeding so as to provide utilities, customers, potential as well as operating RESs, and Staff the opportunity to pursue the object of a uniform tariff. (Commonwealth Edison Company, Ill.C.C. Dkt. No. 99-0117, Order at 152 (Aug. 26, 1999).

A review of the Commission's various orders in the 1999 delivery service tariff cases reveals not only the Commission's decision that pro forma delivery service tariffs were a proper policy objective, but the Commission's strong desire and intent to implement common business practices as a step towards meeting this objective. The Commission essentially made the same findings and conclusions with respect to the following services: credit requirements for RES, off-cycle switching, customer specific billing and usage information requirements, customer self-manager description and requirements, purchase power option, among others. Indeed, Edison witness Arlene Juracek testified in response to a question from the Hearing Examiner, that in many respects the delivery service processes are similar. (Tr. at 715). **Having articulated in several instances near identical findings and conclusions with respect to many aspects of delivery services, there remains no credible explanation as to why these delivery services should not be described in the same or similar manner.**

In conclusion, the Commission has heard all the policy arguments for and against the implementation of pro forma delivery service tariffs and it is clear the Commission supports the implementation of pro forma delivery service tariffs, hence the instant proceeding. Try as they

might, the utilities' efforts to revisit their same arguments should not be only rejected, but completely ignored. Rather, the Commission should focus its attention on issuing directives and an appropriate timeline and procedure to implement pro forma delivery service tariffs.

3. Docket No. 99-0013

In early 1999, the Commission embarked on the process of unbundling certain delivery services provided by the utilities. The services primarily at issue were billing and metering services. After entering an interim order finding that from a policy perspective these services should be unbundled, the Commission then considered the manner in which the unbundled billing and metering services would be reflected in utility tariffs. In this respect the Commission found while there is substantial uniformity in the utilities' proposed unbundled metering tariffs, uniformity of unbundled metering tariffs should be examined in the context of this docket. (In Re Investigation Concerning The Unbundling Of Delivery Services Under Section 16-108 Of The Public Utilities Act, Ill.C.C. Dkt. No. 99-0013, Order at 78 (Oct. 4, 2000)).

4. The Scope And Intent Of The Instant Proceeding

While some utilities in this proceeding suggest or imply the Commission has yet to make a decision pertaining to the propriety of pro forma delivery service tariffs as a policy goal, the undeniable fact remains that the Commission has announced or initiated the following:

- The implementation of pro forma delivery service tariffs will enhance competition.
- The Commission made a limited effort to implement uniformity with respect to certain terms and conditions, and services, in the 1999 delivery service tariff cases.
- The Commission has affirmatively initiated this proceeding to consider the implementation of pro forma delivery service tariffs.

The Commission's order initiating this proceeding reflects all of the above. In the Initiating

Order, the Commission acknowledged it had considered uniformity of delivery service tariffs for all nine Illinois electric utilities in the 1999 cases, stating:

> "While a reading of these orders reveals some variance in the way the tariff uniformity issue is presented to the Commission, evidence adduced in these proceedings by a number of parties, and by the Commission Staff, supported a notion of substantial uniformity of delivery service tariffs on a statewide basis. On the basis of this and other evidence, the Commission concluded that it would initiate a proceeding shortly after the conclusion of the delivery service tariff proceedings to further consider issues related to statewide uniformity, and to offer parties both formal and informal opportunities to resolve these issues."
> Proceeding On The Commission's Own Motion Concerning Delivery Service Tariffs, Ill.C.C. Dkt. No. 00-0494, Initiating Order at 2 (July 11, 2000).

With the above as background, it is worth examining the scope and intent of this proceeding. We firmly believe the Commission intends to move beyond a conceptual or philosophical discussion of pro forma delivery service tariffs. Indeed, in its Initiating Order the Commission states:

> "This proceeding will investigate whether the currently effective sets of utility delivery service tariffs do or do not, by virtue of a lack of uniformity, constitute
>
> > rates or other charges, or classifications, ... demanded, observed, charged or collected ... for any service, product or commodity, or in connection therewith, or ... rules regulations, contracts or practices ..., affecting such rates or other charges, or classifications, ... [that] are unjust, unreasonable, discriminatory or preferential, or in any way in violation of any provisions of law [.]"

(*See id.* at 5.) The Commission states further at the close of this proceeding it will determine (1) what if any provisions in the currently effective sets of delivery services tariffs that are not uniform should be made uniform, and (2) the resulting changes that should be ordered in the delivery services tariffs of each Illinois electric utility to render such tariffs just, reasonable and sufficient. (*See id.* at 5.) The Commission contemplates an order that would require utilities to change or modify existing delivery service tariffs in a uniform manner, in order to promote competition and meet the other attendant goals.